

# **North Smithfield Zoning Board of Review**

## **Meeting Minutes of October 16, 2007**

**The North Smithfield Zoning Board of Review met on Tuesday, October 16, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, RI 02876.**

**Call to Order: The Chair called the meeting to order at 7:03 pm.**

### **I. Call of the Roll**

**Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, Steven Scarpelli, Guy Denizard (arrived at 7:10 pm), William Juhr, Dean Naylor, and Mario DiNunzio. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.**

**The Chair reviewed procedures of the board for all present.**

### **II. Approval of Minutes – September 4 and 18, 2007**

**Mr. Marcantonio made a motion to approve the minutes of September 4, 2007. Mr. Scarpelli seconded the motion, with all in favor.**

**Mr. Marcantonio made a motion to table the approval of the minutes of September 18, 2007, pending review of the transcript. Mr. Scarpelli seconded the motion, with all in favor.**

**III. Continued application of Darcy Chiulli Realty Trust, LLC, requesting to open a storage facility. This will require the granting of a Special Use Permit by the Zoning Board of Review; per section 5.4.8, subsection 9. Locus is 35 Railroad Street, Plat 4, Lot 229.**

**Mr. Benoit informed the Board that he had received a request from the applicant to continue the application to the first meeting in December. Mr. Scarpelli made a motion to continue the application to December 4, 2007. Mr. Jühr seconded the motion, with all members voting in favor.**

**IV. Continued application of Daniel Geer and Debra McManus for Omnipoint Communications, Inc., requesting to install a wireless communication facility (cell tower), which requires a Special Use Permit under Section 5.4.7, subsection 19(A) & 19(B), Section 5.6.3.10, subsection 6, and a dimensional variance under Section 5.6.3.10, subsection 7 (A-1). Locus is 260 Pound Hill Road, Plat 9, Lot 150.**

**Attorney Joe Giammarco was present for the applicant. Brian Grossman, attorney for the applicant who had appeared before the Board previously was unavailable for this meeting. The Chair stated that the Board had received information from the town's Conservation Commission, regarding the possible presence of a historical cemetery at the site. State law protects historical cemeteries from disturbance. The Chair asked the Board to open the**

hearing for the limited purpose of hearing from Don Gagnon, Chair of the Conservation Commission, with regard to the historical cemetery.

Mr. Rossi stated that state law requires identification of cemeteries on site plans, and that historical cemeteries cannot be disturbed within a 25-ft. radius.

Mr. Scarpelli stated that the Board had heard enough previous testimony and he is ready to make a motion to deny the application.

Mr. Rossi stated that the Board should strive for a complete record before voting. The Chair asked Mr. Scarpelli to table the motion until after they hear from Mr. Gagnon. Attorney Aram Jarret, representing abutter Richard Dowling, stated that the issue of the historic cemetery had been brought out in a previous meeting, and since the Board had closed the hearing, not rebuttal by the applicant should be allowed. Mr. Rossi stated that the additional testimony would address the exact location of the historic cemetery and how it would affect the application. He stated that they should ask the applicant if they would locate the registered historic cemetery on the site plan.

Mr. Gagnon was sworn in by the court stenographer. He stated that he had been contacted by a number of parties that historic cemetery, NS 08, is located on the property. He contacted Roger Beaudry who maintains the state database and has the specific location of the historic cemetery. He would like the applicant to identify the cemetery on the site plan. Mr. Gagnon also stated that since the cemetery is neglected, the town has the authority under state law to

**take possession of the cemetery.**

**Mr. Giammarco stated that the applicant would get the information regarding the location of the cemetery and identify it on the site plan. However, he asked the Board that if they were tending to deny the application, then this step would not be necessary. If the Board is tending to approve the application, they could make the identification of the cemetery a condition of approval.**

**Mr. Scarpelli made a motion to deny the application of Daniel Geer and Debra McManus for Omnipoint Communications, Inc., requesting to install a wireless communication facility (cell tower), which requires a Special Use Permit under Section 5.4.7, subsection 19(A) & 19(B), Section 5.6.3.10, subsection 6, and a dimensional variance under Section 5.6.3.10, subsection 7 (A-1) for reasons to be detailed in the written decision. Mr. Marcantonio seconded the motion. Mr. Marcantonio stated that he did not have a problem with the special use portion of the application, but he had a problem approving the requested variances. The Chair stated that he felt that locating the tower on a different part of the property would be better, but the owner had chosen the location too close to neighbors and would not agree to an alternate location. He also stated that his vote would take into consideration that the owners were not willing to testify before the Board as part of this application.**

**The Board's vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio,**

**Chair Mr. Kearns, Mr. Scarpelli, Mr. Denizard. Motion was passed by a vote of 5-0. The application was denied.**

**V. Continued application of Creative Home Improvement Builders, Inc., requesting a dimensional variance for frontage requirements, per section 5.5, subsection 5.5.1. Locus is Black Plain Road, Plat 7, Lot 52.**

**Christopher Zangari, attorney for the applicant, addressed the Board. He stated that at the previous meeting, the Board had discussed whether the lot in question is merged with the adjacent lot. Mr. Zangari had submitted a memorandum of law with his opinion on whether or not the merger ordinance applies to this property (exhibit P6). He also submitted exhibit P5, a tax bill listing Lot 52 and Lot 99 separately. Mr. Zangari stated that Lot 52 is being taxed as a buildable lot. Exhibit P7, a 2- page letter with attachments, from Building Official Bob Benoit, was also submitted. Mr. Zangari asked to call Mr. Benoit to testify with regard to the merger ordinance question. The Chair called a 5-minute recess at 7:37 pm, to give the Board time to review the submitted documents. The meeting was called back to order at 7:40 pm.**

**The Chair stated that the Board had reviewed the letter from Mr. Benoit. Mr. Rossi stated that it is unusual for the applicant to call Mr. Benoit to testify, as he is attending the meeting as a town official. Mr. Zangari stated that he is not asking Mr. Benoit to testify in favor or**

against the application; he just wants him to state his opinion on facts of a legal issue. Mr. DiNunzio stated that Mr. Benoit's opinion is in the record as exhibit P7, and that legal questions should be left to the lawyers.

Mr. Juhr asked if the Board had received any information on this application from the Planning Board. He asked if they should receive an opinion from the Planning Board before continuing with deliberations. Mr. Marcantonio stated that the Planning Board had based a decision in 1975 on plans that were never carried through. Mr. Juhr made a motion to send the application to the Planning Board for their opinion, with regard to the letter dated 9/16/75, and then take the application up further after hearing their recommendation. The Chair stated that the Board is still hearing evidence. Mr. Juhr stated that the hearing had been continued once, so it could be continued again, pending recommendation of the Planning Board. Mr. Zangari stated that they would agree to this, provided that the Board would accept a positive recommendation (if given) by the Planning Board.

Mr. Rossi stated that it is still his opinion that the lot does not exist, as a result of the merger ordinance. He stated that the previous continuation of the application was for the purpose of getting the memo of law (P6) regarding the merger ordinance. Mr. Rossi stated that he completely disagrees with this memorandum and that legally this Board has no lot on which to base the variance on. It is Mr. Rossi's recommendation that the Board is compelled to deny the

variance because the lots have merged.

Mr. Zangari asked if he could call Mr. Benoit to testify. The Chair stated that he would not allow the Building Official to testify. Mr. Rossi stated that there is a procedure for receiving the Building Official's opinion, and the application has received the information requested. Mr. Rossi said he is concerned with setting precedence in allowing Mr. Benoit to testify. Mr. Zangari stated that because he was denied the opportunity to ask factual questions, they would rest. Mr. Rossi stated that the questions are not factual; they are opinions.

The Chair asked Mr. Juhz if he would like to continue with his motion to send the applicant to the Planning Board. Mr. Juhz stated that he would rescind his motion.

The Chair asked if there was anyone in the audience to speak for the application. John Terrill, owner of the property asked what the lot number of the merged lots is, for tax purposes. (Mr. Terrill was sworn in at the previous meeting and was reminded that he is still under oath.) Mr. Rossi stated that there is no lot number for the merged lots, and that the tax assessment is irrelevant to the effect of the merger ordinance and the law. Mr. Terrill stated that he has owned the land for 30 years and was not aware of the merger law. If he had been, he might have gone about putting the land up for sale differently. He asked whom he might go to in the town to see if they would consider taking some of the land to make the sale possible.

**Mr. Rossi stated that it is under the jurisdiction of the Town Council, and they may seek opinion from the Planning Board. Mr. DiNunzio asked if it was possible that the merged land could be subdivided. Mr. Rossi stated that the subdivision would be under the jurisdiction of the Planning Board, who would need a formal application and plans to review. Mr. DiNunzio stated that if the Board follows the advice of the Mr. Rossi, they cannot approve the application, but asked if there were any other actions that the applicant may take. Mr. Rossi stated that the decision can be appealed to Superior Court.**

**Mr. Scarpelli made a motion to deny the application of Creative Home Improvement Builders, Inc., requesting a dimensional variance for frontage requirements, per section 5.5, subsection 5.5.1. Locus is Black Plain Road, Plat 7, Lot 52, based on the advice from the Board's attorney that the lot is merged. Mr. Juhr seconded the motion. Zoning Board vote was as follows: AYE: Mr. Juhr, Mr. Marcantonio, Chair Mr. Kearns, Mr. Scarpelli, Mr. Denizard. Motion passed, 5-0. Application was denied.**

**The Chair called for a 5-minute recess at 8:15 pm. The meeting was called back to order at 8:18 pm.**

**VI. Continued application of Robert C. and June E. Quinn, requesting a Special Use Permit per section 4.5, non-conforming uses of structures or of structures and premises in combination, subsection C. Locus is 1184 Providence Pike, Plat 11, Lot 225.**



**Mr. Marcantonio was recused from the application.**

**Aram Jarret, attorney for Paul Pasquariello, addressed the Board. He stated that he had submitted the information the Board had requested at the previous hearing. The requested information included a more definitive plan for the layout of the property and certain delineations with the proposed use of the property, and an engineer's traffic study report.**

**Erin Gallogly, project manager with Marc Nyberg Associates, was sworn in by the court stenographer. Ms. Gallogly presented a prepared plan with additions to the plan highlighted. The additions to the plan included the proposed parking area for customers, areas where landscaping trucks will be parked, traffic patterns delineated by arrows, and locations of wetlands flags. In response to questions by the Chair and Mr. Scarpelli, Ms. Gallogly stated that six parking spaces are required based on the retail aspect of the business. The parking area will be gravel, with spaces angled for safety. There will be one means of ingress and one egress. The existing parking area is gravel, but has been overgrown. The area will be cleaned out, with edging added to make it look better. No storage of retail stock will take place in the front of the building. The front of the building will be landscaped to show off the business, with plants being maintained to keep it looking nice. The front of the building will be for parking only.**

**There are no plans for a greenhouse or future expansion of the**

nursery stock area. The areas on the plans labeled as additional parking are currently grass.

Mr. Juhz asked about the existing cesspool. Ms. Gallogly stated that it is functioning and the usage should be decreased from that of the previous business. There are no public restrooms. The cesspool is suitable for the proposed business.

Mr. Pasquariello (under oath from previous meeting), stated that the front of the building would be landscaped as he would landscape a customer's home. He will clean up the wooded area and lawn and plant evergreens and mature plant materials. The Chair asked if he had plans to expand into the area to the right of the building. Mr. Pasquariello stated that he will leave this area wooded as it is now. He also testified that no fertilizers or flammable materials would be stored in the buildings. The two landscaping trucks will be stored (when not in use) in the back. There will be equipment containing gas (i.e. lawnmowers) stored in the building. The current office area will be refurbished and used as an office. Responding to questions about the day-to-day operations of the business, Mr. Pasquariello stated that the employees would bring the equipment to the first job, and the crew would travel from customer to customer for the remainder of the day. The retail aspect will be a small portion of the business. The employees will mainly go to the shop to get tools and be out for the remainder of the day. Mr. Pasquariello stated that they anticipate that typically only one employee car would be parked at the business

during the day. Two others have trucks that they will be using out on jobs during the day.

The retail aspect of the business will included typical farm stand items, such as perennials and shrubs grown on Mr. Pasquariello's farm. With regard to Christmas trees, Mr. Pasquariello stated that he will not rule out future sales, but he does not have firm plans at this time. The Chair stated that Christmas tree sales would require a separate special use permit. The Chair also asked about swimming pool installation provided by the business. Mr. Pasquariello stated that they provided installation of 1-piece fiberglass pools. No materials or sample pools will be onsite. The pool is ordered from a company and shipped directly to the customer's home. No pool chemicals will be stored at the business.

Mr. Naylor stated that it seems that the applicant is changing his plans every time he appears before the Board. He stated that he is hesitant to accept that what is being presented is an accurate representation of the proposed business. Mr. Naylor stated that it seems the applicant will say whatever it takes to get the Board to approve the application. Mr. Naylor also questioned the accuracy of the traffic impact study. He stated that the special use should be comparable to the existing use, and he does not think this business is comparable. Mr. Jarret stated that the use does not have to be comparable, it should be equally or more appropriate. Mr. Pasquariello stated that the plans showing additional parking were

presented to demonstrate that they have more than enough room for cars to enter, exit, and park. It was not meant to imply that they are planning to have many cars parked at the site. Mr. Pasquariello also stated that the previous business had race cars stored on the property; he feels a nursery is more fitting for the area. He stated that Leeway sells plumbing, hardware, animal food, and plants. It is not his intention to have a similar business. Mr. Naylor stated that he is not talking about the hardware store and grain business of Leeway, but he does feel the proposed business is very similar to the nursery portion of Leeway. Mr. Pasquariello stated that he will accept nursery stock as a description of what he wants to sell. He will not be selling birdbaths or hardware. He stated that there are similar businesses in the area and most blend into the neighborhood.

Mr. DiNunzio asked if any abutting property owners had objections. Mr. Pasquariello stated that he has not received any objections. Some abutters are present at this meeting and one even allowed him to remove shrubs to comply with suggestions made in the traffic study. The Chair stated that he appreciates that the applicant has taken the time to obtain requested information and submitted it to the Board. He stated that he feels that the Board can make an informed decision based on discussion with engineers and planners.

Traffic Engineer John Shevlin, from PARE Engineering, was sworn in by the court stenographer. He presented his qualifications, which were accepted by the Board. He reviewed the results of the traffic

impact study he conducted and submitted to the Board. He stated that worst case level of service would be during peak time on a Saturday, and that would result in level of service B (11-second delay in traffic). All other times would have level of service A (minimal delay). There was a sight distance issue to the north, but the neighbor agreed to remove shrubs. Now the sight distance far exceeds safety levels.

Real estate broker Richard Fontaine, of Prudential Fontaine testified that only one tenant proposing to use the business as a transmission shop (existing use) has shown interest in the property in the past 3 years. He stated that the proposed business is more in conformity with the rural quiet neighborhood.

The Chair asked if the area of the retail space inside the structure as shown on the plans will remain the same size. He stated that he would like a condition on the approval to restrict special use to what is shown on the plans. Mr. Jarret stated that the plans do accurately show the area planned for office/retail. They only plan on having a cash register, desk, and office furniture in the space. Mr. Jarret also stated that any expansion of a nonconforming use requires Zoning Board approval.

Dean Ricci and John Gagnon, abutting neighbors to the property, were sworn in by the court stenographer and addressed the Board in favor of the application. Mr. Ricci stated that he has lived next door

to the property for 14 years and thinks the proposed business is a better use. He stated that the previous business had vehicles and wrecks parked outside, and noise from power tools during hours of operations. He thinks shrubs and flowers will be better on the property. Mr. Gagnon stated he has lived on the property abutting directly to the front for 5 years. He stated that cars, including race teams, were entering and exiting the property as late as 9-11 pm. He stated there would be 7-8 cars in and out of the property at many times, with minimal impact to traffic. Mr. Gagnon stated that there were vehicle wrecks stored in front and back of the building and noise all day long. He stated that even a full nursery would be a welcome change over the transmission shop.

Mr. Jarret also submitted a letter from Michael Johnson, an abutter adjacent to the building, which was read into the record. Mr. Johnson also supported the proposed use of the building and property.

No one was present to speak against the application.

Mr. Juhre asked if the special use for the landscaping and retail aspects of the business were to be considered separately. Mr. Rossi stated that he would like a 5-minute recess to look into that. The Chair called a recess at 9:10 pm. The meeting was called back to order at 9:13. Mr. Rossi referred to the Zoning Ordinance, section 4.5, subsection C, and stated that the special use is transferred to the landscaping/retail nursery, so they will not require 2 separate special

**use permits.**

**The Chair made a motion to close the public hearing at 9:15 pm. Mr. Scarpelli seconded the motion, with all in favor. The Chair stated that Mr. DiNunzio would be voting on this application. Mr. Rossi stated that if the Board is voting to approve, they should list conditions for the record.**

**The Chair made a motion to grant the application with the following conditions:**

**1) that the plan submitted to the Board and dated 9/21/07 will be the full limit of the business, 2) no exterior storage of bulk materials, such as mulch, loam, gravel, crushed stone, manure, 3) no storage of chemicals or fertilizer for landscaping on the property. Mr. DiNunzio seconded the motion.**

**Mr. Juhr stated that he is uncomfortable with the retail aspect of the business. He has no problem with the landscaping aspect. Mr. Juhr thinks that traffic may be precarious, especially on Saturday mornings. He stated that he wished there was a way for the two aspects to be considered separately. The Chair stated that he initially had similar concerns, but that was before the additional information was submitted. He stated that he thinks the plans look good, the traffic sight distance has been corrected, and abutters have stated they are in favor of this use. The Chair stated that he feels the applicant has done due diligence and feels comfortable to no major**

expansion can occur without the applicant appearing before the Board again. Mr. Scarpelli agreed with the Chair. He stated that the traffic study has been submitted and the Board should rely on experts.

Mr. Naylor stated that he agrees with Mr. Jühr and has concerns with the retail aspects. He stated that although a traffic study has been completed, there is not telling how successful the business will be. Mr. Scarpelli stated that with a transmission shop, the Board would have no control over how the business would be run, since that use is permitted. Mr. DiNunzio stated that he appreciates the concerns of Mr. Naylor and Mr. Jühr, but there is an existing farm stand not too far away on Greenville Road, and there have been no traffic problems. He feels that business would generate more business, especially in summer, than the proposed nursery.

Mr. Rossi stated that the Board should place a condition regarding retail sales being limited to goods related to the landscaping business, such as nursery stock and perennials.

The Chair amended his motion to add the condition 4) that retail sales are limited to live plant materials. Mr. DiNunzio seconded the amendment to the motion.

Mr. Scarpelli stated that with the existing use, vehicles with leaky transmissions could be parked on wetland areas in the back. Mr.



**Naylor stated that the special use as a transmission shop has been rescinded because it's not in use and abandonment of the use makes the permit expire. Mr. Fontaine stated that it has been in use within the past 8 months and has not been abandoned.**

**The Chair amended his motion to include the stipulation 5) that remedies put in place per the traffic study be maintained. Mr. DiNunzio seconded the amendment to the motion.**

**Zoning Board vote was as follows: AYE: Mr. Scarpelli, Chair Mr. Kearns, Mr. Denizard, Mr. DiNunzio. NO: Mr. Juhr. Application was approved by a vote of 4-1.**

**VII. Continued application of The Homestead Group, requesting Special Use Permits, for flea market (outdoor retail sales in an open lot) per section 5.4.7 (20), attached dwelling for owner or operator per section 5.4.2 (5), and entertainment, performances, theatrical productions, wedding receptions, and parties per section 5.4.4 (18). Locus is 200 Industrial Drive, Plat 5, Lot 300.**

**Cheryl Custer, Facilities Director for The Homestead Group, addressed the Board to answer some concerns that were raised at the previous meeting. The back parking lot is approximately 400 feet from the pond, including a 10-ft. leeway in case the water rises due to excessive rain. Ms. Custer had been in contact with Michael Sullivan at the DEM. She was informed that the parking concern (and its**

proximity to the pond) is not a DEM issue and with the distance of 400 feet between the pond and the parking area, the DEM does not feel it would be a problem.

Ms. Custer also presented a letter from owner Peter Sangermano, which was read into the record. The letter stated that the Homestead Group is authorized to pursue an entertainment permit for the property and to use the Office Park parking area to handle overflow parking. The letter further stated that the owner has no intention of operating or maintaining an entertainment license when and if The Homestead Group stops operating on the property.

Mr. Juhr stated that he was satisfied with the solutions to parking concerns, but because the special use permit goes with the land, if the owner were to sell the property, the entertainment value would follow the deed of the land. Mr. Scarpelli stated that the ordinance states that there can be no expansion of a non-conforming use; so another owner would not be able to expand the entertainment beyond what is approved for this applicant. Mr. Scarpelli questioned how valuable this entertainment use would be to another business. Mr. Juhr responded that a nightclub could be opened if another board in town granted a liquor license. The Chair stated that the Zoning Board does not have control over future boards or other town entities.

Mr. Marcantonio asked if the applicant had appeared before the Planning Board. Mr. Rossi stated that the Planning Board had given a

recommendation on this application. Mr. Rossi was present at that meeting, and did not recall any major issues. Mr. Juhz stated he would like to get a copy of the Planning Board's recommendation and make a ruling based on that.

Mr. DiNunzio stated that he would like to see a condition on the approval that would prohibit alcohol sales. This condition would also be long term and continue with any future owner.

Mr. Rossi stated that he is researching legalities involved in limiting use to this applicant. He stated that it is very difficult to limit a use to a certain applicant. He is looking into limiting use by time, with the use being renewed if there is no real change in circumstances. Mr. Scarpelli asked if a change in ownership is a change in circumstances, but Mr. Rossi stated that it is not.

The Chair made a motion to continue the hearing to November 6 so the Board can get a copy of the Planning Board's recommendation. Mr. Scarpelli seconded the motion, with all in favor.

Mr. Marcantonio asked about the continued application of Chiulli Realty and the proposed storage facility. He asked if the applicant had appeared before the Planning Board. Mr. Rossi stated that they are coming to the Zoning Board first, and then if the special use permit is granted, they will appear before the Planning Board for a full site plan review. There is an option in the ordinance that allows the

applicant to choose to appear first to the Zoning Board or the Planning Board, depending on which is more practical. The Chair stated that it is unfortunate the way the ordinance is drafted, because he thinks they should be going to the Planning Board first. He understands that the applicant does not want to spend the money on fully engineered plans before receiving the special use permit, but it is difficult for the Zoning Board to make a decision without complete data to review. He asked if they could send the applicant to the Planning Board first. Mr. Rossi stated that they could not, and that The Board's review of the application should be limited to the use in question. If the Planning Board gives approval, but variances are needed, the applicant would then appear before the Zoning Board again.

Mr. Scarpelli made a motion to adjourn at 9:55 p.m., seconded by Mr. Marcantonio, with all in favor.

Respectfully submitted,  
Angela Pugliese, Clerk